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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 733 OF 2015

- | | |
|----------------------------------|----------------------|
| 1. Smt. Urmila Jotiram Gaikwad |) |
| Age: 55 years, Occ: Household |) |
| 2. Ku. Pradeep Jotiram Gaikwad |) |
| Age: 35 years, Occ. Education |) |
| 3. Ku. Sandeep Jotiram Gaikwad |) |
| Age: 33 years. Occu.: Education |) |
| 4. Kum. Amrapali Jotiram Gaikwad |) |
| Age: 32 years, Occ: Education |) |
| All R/o Shan Apartment, |) |
| Flat No. 2, Solapur |)....Appellants |
| | (Original Claimants) |

Versus

- | | |
|-------------------------------------|------------------------|
| 1. M/s. Bayer India Ltd. |) |
| (Jeep Owner) |) |
| C/o. Mr. S. V. Bhamurkal, |) |
| C/o, Dhakle Enterprises, 167, Mehta |) |
| Towers, Budhwar Peth, |) |
| Panjaraol Chowk, Solapur. |) |
| 2. Mr. Mahadeo Keraba Navade |) |
| A/p Banegaon, Tal: North Solapur, |) |
| 3. The New India Assurance Co. Ltd. |) |
| Hutatma Complex, Park Chowk, |) |
| Solapur. |)....Respondents |
| | (Original Respondents) |

Mr. R. S. Alange for the Appellant
Mr. D. S. Joshi for the Respondent

CORAM : S. G. DIGE, J.

DATE : 24th FEBRUARY 2023.

JUDGMENT:

1. By way of this appeal, appellants/claimants are seeking enhancement of compensation.
2. It is contention of learned counsel for the appellants that deceased was having more than 100 Acres of land on different places, deceased used to cultivate fruit garden in his agriculture land and was getting huge income from agriculture land.
3. The learned counsel further submits that deceased Jotiram was awarded "Krushi Bhushan Puraskar" by the State Government. Deceased had also received "Vasantrao Naik Krushi Puraskar" for his magnificent and efficient work in the agriculture field. Deceased was doing the business of "Shetkari Seva Kendra" and was getting income from it. He used to get in all income at Rs. 1,00,000/- per month but Tribunal has considered only Rs. 27,000/- per month which is on

lower side. Hence, requested to allow the appeal.

4. The learned counsel further submits that the tribunal has awarded rate of interest from year 2008. Whereas petition was filed in the year 1999. It is settled law that claimants are entitled for the interest from the filing of claim petition.

5. It is contention of learned counsel for the respondent no.3/Insurance Company that no evidence was produced before the Tribunal to show that deceased was possessing 100 Acres of land and he was doing the business of "Krusha Seva Kendra". The learned counsel further submits that tribunal has awarded excessive compensation. The tribunal has awarded amount of Rs. 2,20,000/- for consortium amount which is on higher side. Hence, no interference is required in the judgment and order passed by the tribunal.

6. I have heard both learned counsel perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'). To prove the income of deceased claimants have examined claimant no. 1 Urmila Gaikwad, she has stated that her husband used to get about Rs. 1,00,000/- per month from the source of agriculture lands as well as from the business of "Shetkari Seva Kendra". In order

to prove the income of deceased and to support the evidence of claimant no.1 the Claimants have examined Prakash Maroti Kamble at Exhibit-153. He has stated that he was working as a Branch Manager in the Bank of Maharashtra. He further stated that loan amounts were taken by the deceased Jotiram Gaikwad for developing the Agriculture land and for carrying out the business. The deceased had taken total loan of Rs. 7,00,000/- for cultivating fruit gardens. This witness further stated that deceased Jotiram used to make repayment of loan regularly. The loan papers are at Exhibit-154(A) and (B). The claimants have examined Bharat Mangrulkar at Exhibit-154 Chartered Accountant at Solapur. This witness produced three audit reports in respect of business of "Shetkari Seva Kendra" which was carried out by deceased Jotiram, audit reports are at Exhibit-156-158. The claimants have examined witness Sarangi Sudarshan Laxman at Exhibit-159 Chartered Accountant. This witness has produced audit report which are at Exhibit-161 to 163. In cross-examination this witness has stated that in the year 2000 there was profit of Rs. 3,27,000/- to "Shetkari Seva Kendra" which was run by deceased and about Rs. 3,63,000/- was profit in 2001. The claimants also examined Suresh Jawalkote at Exhibit 151. This witness was working as a clerk

in Regional Transport Office at Solapur. He produced some documents in respect of registration of particulars of vehicle to show that deceased Jotiram was owner of different kind of vehicle including four wheelers and two wheelers. From the evidence of these witnesses it reveals that deceased was economically sound and he was doing agriculture and he was doing business of "Shetkari Seva Kendra". It also appears from the record that deceased had received the award of Maharashtra Government "Krushi Bhushan Puraskar" it awarded to the farmer. Who has done excellent work in the agriculture field. Deceased also received prestigious "Vasantrao Naik Krushi Puraskar". It shows that deceased had developed his agriculture land. Moreover from the evidence of witnesses, it is proved that he was also carrying business of "Shetkari Seva Kendra".

7. Considering the evidence of these witnesses. In my view, monthly income deceased at Rs.27000/- considered by the tribunal is on lower side. It should be Rs.30,000/-. Hence I am considering Rs. 30,000/- as monthly income of deceased. The tribunal has awarded Rs. 2,20,000/- as consortium amount as per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*** each claimant is entitled for Rs. 40,000/-

as consortium amount there are four claimants and Rs.15,000 for funeral expenses and Rs. 15,000/- for loss of estate. It comes to Rs. 1,90,000/-, I am considering this amount.

8. In view of above, the claimants are entitled for following compensation.

Monthly Income (Maneerial)	Rs. 30,000/-
Annual Income (30,000 X 12)	Rs. 3,60,000/-
Personal Expenses (1/4)	Rs. 90,000/- -----
Dependency	Rs. 2,70,000/-
Future Prospects 10%	Rs. 27,000/- -----
Total Dependency (Annual)	2,97,000/-
Multiplier (54 years)	11 -----
Total loss of income	Rs. 32,67,000/-
Consortium Rs. 44,000 X 4	Rs. 1,76,000/-
Funeral Expenses	Rs. 16,500/-
Loss of estate	Rs. 16,500/-
Total	Rs. 34,76,000/-

The Tribunal has awarded Rs. 25,50,000/-, if this amount

deducts from the amount considered by this Court, it comes to Rs. 9,26,000/-. The claimants are entitled for this amount while awarding compensation, the tribunal has awarded interest on it from the year 2008. The claim petition was filed in the year 1999 it it settled principle of law that the claimant are entitled for interest on compensation from date of filing claim petition.

9. In view of above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for the enhanced amount Rs. 9,26,000/- at the rate of 7.5% from the date of filing claim petition till realization of the amount, out of this amount Rs. 2,09,000 is consortium amount. On this amount claimants are entitled @ 7.5% from 1 October 2017 till realization of amount.
- iii. The claimants are entitled interest on award amount awarded by the tribunal from date of filing claim petition till realization.
- iv. The respondents are directed to deposit the enhanced

amount along with accrued interest thereon within six weeks after receipt of the order.

- v. The applicants are permitted to withdraw award amount and enhanced amount along with accrued interest thereon.

(S. G. DIGE, J.)